

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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TNHYIF, INC.,

Plaintiff,

-against-

**ORDER TO SHOW CAUSE**

VINEYARD COMMONS HOLDINGS, LLC, WORKERS'  
COMPENSATION BOARD OF THE STATE OF NEW  
YORK, NEW YORK STATE DEPARTMENT OF LABOR,  
VINEYARD COMMONS CLUBHOUSE, INC.,  
VINEYARD COMMONS APARTMENTS INC. and  
"JOHN DOE NO. 1" through "JANE DOE NO. 12", the last  
twelve names being fictitious and unknown to Plaintiff, the  
persons or parties intended being tenants, occupants, persons  
or corporations, if any, having or claiming an interest in or  
lien upon the Premises, described in the Complaint,

Docket No.: 1: 12-cv-1692  
Hon. Lawrence E. Kahn

Defendants.

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**PURSUANT** to Local Civil Rule 7.1(e), and upon the annexed Affidavit of  
Desmond McGowan, Chief Financial Officer of Plaintiff TNHYIF, Inc. ("Plaintiff"), duly sworn  
to on the 28th day of November, 2012, together with all exhibits annexed thereto, and upon the  
annexed Affidavit of Good and Sufficient Cause of Joshua E. Kimerling, Esq., a member of  
Cuddy & Feder LLP, attorneys for Plaintiff, duly sworn to on the 28th day of November, 2012,  
and upon Plaintiff's Memorandum of Law submitted herewith, and upon all prior pleadings and  
proceedings heretofore had herein;

**LET** non-party movants, John O'Donnell, Maria Freitas and Spyros Panos  
("Non-Party Movants") or their attorneys, and any party to this action, **SHOW CAUSE**, before  
the Honorable Lawrence E. Kahn, United States District Judge, at the United States District  
Court, Northern District of New York, James T. Foley United States Courthouse, 445 Broadway,

Albany, New York on the \_\_\_\_ day of \_\_\_\_\_, 2012, at \_\_\_\_ in the \_\_\_\_\_ of that day or as soon thereafter as counsel may be heard, **WHY** an Order should not be made and entered:

- (a) remanding this action in its entirety to the Supreme Court of New York, County of Ulster, pursuant to 28 U.S.C.A. § 1441 and 28 U.S.C.A. § 1447 and supporting case law on the grounds that:
  - i. at the time of the commencement of this action in the Supreme Court of the State of New York, County of Ulster and the filing of Non-Party Movants' Notice of Removal, there was no complete diversity of citizenship;
  - ii. Non-Party Movants lack standing to seek removal of this action;
  - iii. Non-Party Movants' Notice of Removal is untimely;
  - iv. Non-Party Movants have not obtained the unanimous consent of the current defendants for removal, as required by 28 U.S.C.A. 1446(b)(2)(A); and
  - v. Non-Party Movants' allegation that the United States "may be a potential (third) party in this action" does not support removal or give rise to any federal question jurisdiction;
- (b) awarding Plaintiff its costs incurred in this Court by reason of such removal;
- (c) pursuant to Fed R. Civ. P. 11(c), imposing monetary sanctions upon Non-Party Movants and/or their attorneys, in an amount necessary to reimburse

the attorneys' fees, costs and expenses incurred in this action by Plaintiff on the ground that the filing of the Notice of Removal violates Fed R. Civ. P. 11(b) because it is unwarranted under existing law, frivolous, and lacks any evidentiary support;

- (d) Ordering that, pending a final determination of this Court on the Motion to Remand, the Supreme Court of New York, County of Ulster, shall retain full jurisdiction over all proceedings in the action and that all proceedings shall be entitled to continue in the State Court; and
- (e) granting to Plaintiff such other, further and different relief as the Court may deem just and proper.

**SUFFICIENT CAUSE APPEARING THEREFORE**, it is hereby

**ORDERED, ADJUDGED AND DECREED**, that pending the Court's determination on this motion, the Supreme Court of New York, County of Ulster, shall retain jurisdiction over all proceedings in the State Court action, which action shall be permitted to continue therein in all respects, including but not limited to the following:

- a. Plaintiff's Motion for Leave to Amend the Amended Complaint shall be permitted to be decided by the State Court, and if granted, Plaintiff shall be permitted to serve and file the Second Amended Complaint and the defendants shall respond thereto; and
- b. The Motion by Defendant Vinyard Commons Apartments, Inc. and the Cross-Motion filed by Plaintiff, which motions are returnable on November 30, 2012, and which Plaintiff has yet to file its reply papers on, shall be

permitted to proceed with Plaintiff's filing of such reply and the State Court shall be permitted to decide said motions; and it is further

**ORDERED, ADJUDGED AND DECREED**, that Non-Party Movants shall file papers answering this Order to Show Cause on or before the \_\_\_\_ day of \_\_\_\_\_, 2012; and it is further

**ORDERED, ADJUDGED AND DECREED**, that Plaintiff shall file any reply papers in further support of its application on or before the \_\_\_\_ day of \_\_\_\_\_, 2012; and it is further

**ORDERED, ADJUDGED AND DECREED**, that oral argument shall be heard on Plaintiff's application on the \_\_\_\_ day of \_\_\_\_\_, 2012, at \_\_\_\_ in the \_\_\_\_\_ of that day or as soon thereafter as counsel may be heard at the United States District Court, Northern District of New York, Room \_\_\_\_\_, James T. Foley United States Courthouse, 445 Broadway, Albany, New York; and it is further

**ORDERED, ADJUDGED AND DECREED** that service of a copy of this Order, together with all papers upon which it is based, by overnight courier upon Non-Party Movants' counsel at 20 Vesey Street, Suite 503, New York, New York 10007, and upon all other counsel of record at their office addresses, on or before the \_\_\_\_ day of \_\_\_\_\_, 2012, shall be deemed good and sufficient service.

Dated: Albany, New York  
November \_\_\_\_, 2012

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Hon. Lawrence E. Kahn  
United States District Court Judge  
Northern District of New York